

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RICKY A. SANDERS,

Petitioner,

v.

CAROL HOLINKA, Warden,

Respondent.  
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ORDER

10-cv-173-slc<sup>1</sup>

In this petition for a writ of habeas corpus brought under 28 U.S.C. § 2241, petitioner Ricky A. Sanders contends that he is in custody in violation of federal law because he was not given due process before his parole was revoked and his appeal of the revocation was not decided in a timely manner. On April 23, 2010, I ordered respondent Holinka to file a response to this petition not later than 20 days from the date of service of the petition showing cause, if any, why this writ should not issue on petitioner Ricky A. Sanders's claim that he was denied due process of the law when the hearing examiner relied on insufficient evidence and improper hearsay evidence to find that petitioner had violated the terms of his

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<sup>1</sup> For the purpose of issuing this order, I am assuming jurisdiction over the case.

parole by possessing cocaine and by possessing cocaine with intent to deliver.

Now before the court is Holinka's motion to dismiss for petitioner's failure to exhaust administrative remedies or in the alternative for an extension of time to respond to this court's order to show cause. In support of her motion, Holinka has submitted an affidavit of Johanna E. Markind and attorney for the United States Parole Commission. Markind asserts that the Commission had no record of receiving petitioner's August 20, 2009 appeal of the Commission's June 1, 2009 Notice of Action. Petitioner's lawyer on the appeal asked the Commission to accept a second appeal which was filed on March 16, 2010. The Commission has 60 days to decide this appeal.

To allow respondent an opportunity to review the Commission's decision, I will stay briefing on the motion to dismiss for failure to exhaust administrative remedies and grant respondent an extension of time until June 3, 2010 to respond to the order to show cause. If respondent files a response, I will lift the stay and give petitioner an opportunity to file a traverse in which he may respond to both respondent's response and the motion to dismiss for his failure to exhaust administrative remedies.

#### ORDER

IT IS ORDERED that

1. A ruling on respondent C. Holinka's motion to dismiss for failure to exhaust

administrative remedies is RESERVED and .

2. Respondents's motion for an extension of time until June 3, 2010 to file her response to this court's April 23, 2010 order is GRANTED; petitioner may have 20 days from the time that respondent serves the response to file a traverse to the allegations of this response, together with and a response to the motion to dismiss.

Entered this 12th day of May, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge